

REMARKS

Claims 1, 5, 6, 7, 8, 10-11, and 15 -20 are pending in this application. Claims 1, 5, 6, 7, 8, and 11, 15-19 are amended. Claims 2-4, 9, 12, 13, and 14 are cancelled. In the Office Action, claims 1-9 and 11-19 are rejected over prior art. Reconsideration of the rejections is respectfully requested.

DRAWINGS

Please find attached replacement sheets for Figures 1 and 2 designating them as Prior Art.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge and thank the Examiner for indicating that claims 10 and 20 contain allowable subject matter.

CLAIM REJECTION UNDER 35 U.S.C. §102

Claims 1-3, 5-8, and 11-18 are rejected under 35 U.S.C. § 102(e), as being anticipated by Evans (U.S. 6,853,627).

In regards to claims 1-3, and 5-8, Applicants have amended claim 1 to incorporate the subject matter of claims 2 and 9, thereby mooting the Examiner's § 102(e) rejection with regards to claim 1. Claims 2 and 3 are cancelled, thereby also mooting the rejections regarding those claims. Rejection to claims 5-8 are also moot with regard to their rejection under § 102(e). Withdrawal of the Examiner § 102(e) rejection is respectfully requested for these claims.

The Examiner alleges that Evan discloses all the limitations of claim 11. The Applicants have amended claim 11 by incorporating the subject matter of claims 12 and 14, in addition, claim 11 has been amended to recite that the processing circuitry is adapted “to use said information to determine a node of said second set to connect with said node of said first set connect with said node of said first set.”

The Applicants respectfully submit that Evans fails to teach or suggest “processing circuitry adapted to receive information characterizing usage level of the nodes of the second set and to use said information to determine a node of said second set to connect with said node of said first set,” as recited in claim 11. Withdrawal of the Examiner § 102(e) rejection is respectfully requested for these claims.

Claims 13, 15-18 dependent to claim 11 are also patentable for the reasons given with regard to claim 11 and for additional limitation recited thereby.

CLAIM REJECTION UNDER 35 U.S.C. §103

Claims 4, 9, 14 and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Evans. This rejection is also respectfully traversed.

First, with respect to claim 19, Applicants submit that the base claim 11 is patentable over the Examiner’s §102(e) rejection as argued above. Therefore, claim 19, which depends on claim 11, is also patentable.

Claim 4 is cancelled, thereby mooting the Examiner’s §103(a) rejection for this claim.

As noted above, the Applicants have amended claim 1 by incorporating the subject matter of claims 2 and 9.

The Examiner alleges that “it would have been obvious to one having ordinary skill in the art at the time ...to select the right nodes during hand off.” However, the Examiner has failed to provide any evidence why it would be obvious to a person of ordinary skill.

To be a proper rejection under §103(a) the Examiner must make a proper *prima facie* case of obviousness. The Examiner must show (1) some suggestion or motivation, either in the reference themselves *or in the general knowledge*, (2) some reasonable expectation of success, and (3) the reference must teach or suggest all the limitation of the claim limitations. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991).

The Examiner alleges that it is in the general knowledge of a person of ordinary skilled in the art with regard to rejecting claim 9 under §103(a). In other words, the Examiner is taking official notice to rely on “common knowledge.” MPEP 2144.03. However, MPEP 2144.03A provides that an Examiner may take official notice only when facts asserted to be well known must be “*capable of instant and unquestionable demonstration as being well known.*” MPEP 2144.03B further provides “there must be some form of evidence of record to support an assertion of common knowledge.”

The Applicants respectfully submit that the Examiner has failed to provide adequate basis and support to take an official notice that “it would have been obvious to one having ordinary skill in the art at the time ...to select the right nodes during hand off.” More importantly, the Examiner provides no evidence or motivation that such knowledge results in the “receiving,” “using,” and “connecting” steps of claim 1, and similarly recited in claim 9.

Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the above remarks, reconsideration of the rejections and allowance of claims 1, 5, 6, 7, 8, 10-11, and 15 -20 are pending in this application. are respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below. If the Examiner believes that a personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (703) 668-8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNES, DICKEY & PIERCE, PLC

By 
Gary D. Yacura, Reg. No. 35,416

P.O. Box 8910
Reston, VA 20195
(703) 668-8000

GDY/LYP